

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 111 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

COMMISSIONER OF INCOME-TAX

Versus

SUBHASH FAMILY TRUST

Appearance:

MR MIHIR JOSHI for MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 11/11/98

ORAL JUDGEMENT (per R. Balia, .)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'A', at the instance of the Commissioner of Income-tax, Gujarat, has referred the following two questions of law stated to be arising out of its order dated 12.9.1983 in I.T.A. No. 2074/Ahd/1982 relating to

Assessment Year 1979-80.

2. The facts in short are that the assessee is a trust created for Minors Monash and Milesh. On perusal of the Trust Deed, particularly clause 8(a) & (b) of the trust, the ITO found that, under the terms of deed, the trustees are not under an obligation to distribute the earnings. Therefore, the trust is a discretionary trust and the provisions of Sec. 164 are applicable. Aggrieved with the order of that assessment, the assessee preferred an appeal before the A.A.C. who allowed the appeal by holding otherwise that the trust is not a discretionary trust and the trustees are under an obligation to distribute the earnings amongst the beneficiaries and the beneficiaries are determinate. The Tribunal, on further appeal, following its own decision in the case of the assessee for the earlier years as well as in the case of Tanvi Sajni Family Trust in ITA Nos. 29 and 30 of 1980, affirmed the findings of the A.A.C.

3. We are told at the time of hearing that the questions of law about the nature of the trust and reference being made in the case of said Tanvi Sajni Family Trust have since been decided by this court in favour of the assessee and against the Revenue in (1994) 76 Taxman (Tax Reports) 236.

4. For the present purposes it would be profitable to reproduce clauses 8(a) & (b) of the Trust Deed in question.

8. Subject to the payments mentioned in the previous clause, it is hereby agreed and declared that the trustees shall hold the trust fund upon trust following :-

(a) Up to and including 31st March, 1997 the trustees shall pay and distribute 50% of the net income of the trust fund to and amongst..... or the survivors for his or their absolute use and benefit provided however that the whole or any part of the net income of the trust fund as any not have to be distributed by the trustees in any year shall be at the end of the year be added to and held as accretion of the capital and form part of the corpus of the trust fund and shall be dealt with accordingly.

(b) Up to and including 31.3.1997, the

trustees shall pay and distribute 50% of the net income of the trust fund to and amongst or the survivor or survivors for his or their absolute use and benefit provided however that the whole or any part of the net income of the trust fund as may not have to be distributed by the trustees in any year shall at the end of the year be added to and held as accretion to capital and form part of the corpus of the trust fund."

5. It is not in dispute that the trust deed in Tanvi Sajani Family Trust's case was couched in identical terms which is also apparent from the clauses of the trust deed quoted in the judgment referred to above. Sub-clause (b) of clause 8 in the said trust deed also provided "however that the whole or any part of the net income of the trust fund as may not have to be distributed by the trustees in any year shall at the end of the year be added to and held as accretion to capital and form part of corpus of the trust fund." This court, while construing the pari materia clauses of the trust deed with the present case, was of the opinion that the aforesaid provision does not militate against the fact that the shares of the beneficiaries are determinate and definite and a duty is enjoined upon the trustees to distribute 50% of the income of the trust to the true beneficiaries. The court came to the conclusion that, in view of the aforesaid conclusions, the Tribunal was justified in not holding the trust to be a discretionary trust but a specific trust and the provisions of Sec. 164 of the Act were not applicable. It is on all fours applicable in the facts and circumstances of the present case.

6. We therefore answer the questions referred to us in favour of the assessee and against the Revenue by holding that the assessee trust is a specific trust and the finding to that effect of the appellate tribunal is justified on material on record. There shall be no order as to costs.

(hn)